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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,017	08/07/2001	Carl J. Pacifico	1001-3	3051

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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761 S  
DATE MAILED: 10/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/924,017</b>	Applicant <b>Pacifico</b>
Examiner <b>Lien Tran</b>	Art Unit <b>1761</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Aug 7, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-31 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-31 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3

6)  Other: \_\_\_\_\_

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1. Clarification is requested of the disclosure on page 10. In table 1, applicant discloses 4 samples if coating with sample 1 being microporous and the samples being continuous; the samples give different leach rate. The difference between microporous and continuous is not understood. On page 6, applicant defines microporous as "a coating which is sufficiently impermeable to prevent migration of water thereacross at room temperature, yet is sufficiently permeable to allow hydration of an encapsulated agent with the introduction of energy, usually in the form of heat". The definition defines the characteristic of solid fat. Table 1 discloses vegetable oil is used as the coating material for all three samples; thus, it is not known what the difference is between the vegetable oil of sample 1 and that of samples 2-4. Applicant does not disclose that the vegetable oil of sample 1 is treated to make it different from the other three samples. Applicant does not define what "continuous" mean.

2. Claims 3-4,7-9, 17-18 and 21-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is vague and indefinite; what does applicant mean by "heat sufficient to saturate said coating". How can heat saturate the coating. Also, what does applicant mean by "hydration of said ingredient"; if there is no water, how can the ingredient be hydrated. Hydration does not place with heat.

Claim 4 is vague and indefinite; what is the difference between the first hydration and the second hydration. Also, claim 4 has the same problem as claim 3.

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Claim 7 is vague and indefinite because it is not clear what is intended. The ingredient comprises both the coating and the leavening agent; thus, what does " said ingredient" refer to?

Claims 8-9 have the same problem as claim 7.

Claims 17-18 have the same problem as claims 3-4.

Claims 21-23 have the same problem as claim 7.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-11,13-25,27-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Katz et al.

Katz et al disclose a leavening system comprising of gluconodelta-lactone and sodium bicarbonate. One of the components is coated with a partially hydrogenated vegetable oil. The acid can be coated or the sodium bicarbonate can be coated. The preferred encapsulated glucono-delta-lactone comprises by weight 48-72% glucono-delta-lactone coated with 28-52% partially hydrogenated vegetable oil. The leavening system is used in bread dough. (See col. 3 lines 1-25 and example 3)

Katz et al disclose coating leavening ingredient with hydrogenated vegetable oil which is the same coating material as claimed; thus, it is inherent the Katz et al composition has the properties as claimed. With respect to claims 7-9 and 21-23, if said ingredient refers to the

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coating material, the range disclosed by Katz et al falls within the range claimed. If said ingredient refers to the leavening agent, then the range disclosed by Katz et al also falls within the claimed range.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 12, 26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz et al.

The teaching of Katz et al is described above. They do not disclose the size, the amount of leavening incorporated into the dough and muffin dough.

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Since the agent used in the Katz et al composition is leavening agent, it is expected the size is closed to the one claimed. In any event, it would have been obvious to use product of varying size depending on the texture and how well one wants the ingredient to blend in with other ingredients of the dough. It is known finer agent will blend in better with the rest of the ingredients than coarser one. As to the amount, the amount leavening used varies with the type of product and the volume and texture desired. It would have been obvious to one skilled in the art to use an amount which would give the most optimum rising and texture to the specific product being made; this amount can readily be determined by one skilled in the art through routine experimentation. It would also have been obvious to use the encapsulated leavening ingredient in any other product which requires leavening agent and when the benefit provided by the encapsulation is desired. Muffin requires leavening agent; thus, it would have been obvious to add it to muffin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 27, 2002

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Oncup700*